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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,520	08/03/2001	Donald Pham	CISCO-4113	8849
7590		06/29/2005	EXAMINER	
Timothy A. Brisson		DUONG, DUC T		
Sierra Patent Group		ART UNIT		
P.O. Box 6149		PAPER NUMBER		
Stateline, NV 89449		2663		

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/922,520

**Applicant(s)**

PHAM ET AL.

**Examiner**

Duc T. Duong

**Art Unit**

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9,11-15,17-21 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-8,11-14,17-21 and 25-30 is/are rejected.
- 7) ☒ Claim(s) 3,9,15,24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 2, 5-8, 11-14, 17-21, and 25-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claim 24 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 24 is dependent on cancelled claim 22.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 7, 13, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 7, 13, 19 and 24 recite the limitation "the peak performance rate" in lines 7, 7, 6, 6 and 1, respectively. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 7, 8, 13, 14, 19, 22, and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson (U.S. Patent 6,625,764 B1) in view of Keshav (U.S. Patent 5,627,970).

Regarding to claims 1, 7, 13, 19, and 22, Dawson discloses an apparatus for measuring the performance of a scalable network (Fig. 1) comprising means 30 for preparing the network for testing (Fig. 1 col. 5 lines 6-17); means 14 for sending a plurality of packets to a client node 24 (Fig. 1 col. 4 lines 6-18); and means 24 for counting said received packets (Fig. 1 col. 4 lines 34-42).

Dawson fails to teach for sending the packets at a constant stream.

However, to arrange the apparatus of Dawson to transmit a constant stream of packets would have been obvious to a person of ordinary skill in the art to minimize the interpacket delay time. The motivation to do so would have been for supporting multimedia applications, which are highly delay sensitive.

Dawson fails to teach for establishing a peak performance rate as the highest rate with no packet dropout.

However, Keshav discloses an apparatus for achieving and maintaining an optimum transmission, wherein an optimal operating rate (peak performance rate) is adaptively increase until a packet loss is detected (Fig. 4 col. 6 lines 46-57).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to set an optimal rate as the highest rate with no packet drop as

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taught by Keshav in Dawson's system for an efficient utilization of the transmission bandwidth.

Regarding to claims 2, 8, and 14, Dawson discloses for establishing a corresponding routing path for a session to be tested (Fig. 3 col. 5 lines 56-63; the test packet generator 14 generates an Ethernet frame 200 with a destination 202 and source addresses 204, which corresponds to a routing path).

Regarding to claim 25, Dawson discloses the network under test includes two Fast Ethernet pathways 15 and 19 (Fig. 1 col. 4 lines 6-8 and lines 20-22).

Regarding to claims 26, 27, and 28, Dawson fails to teach for the network test includes eight Fast Ethernet pathways (claim 26), at least two Gigabit Ethernet pathways (claim 27), and four OC-3 pathways (claim 28). However, to arrange such pathways for testing would have been obvious to a person of ordinary skill in the art since such arrangement of pathways are well known in the art to be implemented in various communication networks.

Regarding to claim 29, Dawson discloses the packet generator 14 is configured to perform testing using software (Fig. 1 col. 12 lines 55-64).

Regarding to claim 30, Dawson discloses the system is configured to download a test configuration file from a TFTP server 30 (Fig. 1 col. 5 lines 6-17)

7. Claims 5, 6, 11, 12, 17, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson and Keshav in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, and 21, Dawson and Keshav disclose all the limitations with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level networks. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sends over an OC-3 or OC-12 level (col. 4 lines 21-26). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network as taught by Beverly in Dawson's system for measuring the performance of high speed networks, such as SONET or SDH.

***Allowable Subject Matter***

8. Claims 3, 9, 15, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or make obvious the step of or means for **“establishing a static IP route for each said session”**, when the establishing is considered within the specific structure of the method recited in claim 3 or the device recited in claims 9 and 15. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or make obvious the step of or means for **“the peak performance rate of said network under test is established as the maximum receive rate at a particular packet size with no packet dropout”**, when such peak performance is considered within the specific structure of the device recited in claims 24.

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**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DD

DD

  
RICKY NGO  
PRIMARY EXAMINER

8/23/05